

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Plaintiff,

-against-

WESTCHESTER FIRE INSURANCE
COMPANY,

Defendant.

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WESTCHESTER FIR INSURANCE
COMPANY,

Third-Party Plaintiff,

-against-

GLASSWALL, LLC, UGO COLOMBO, and
SARA JAYNE KENNEDY COLOMBO,

Third-Party Defendants.

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**DECLARATION OF JAMES P. CINQUE
IN SUPPORT OF CROSS-MOTION
TO DISMISS APPLICATION TO
CONFIRM ARBITRATION AWARD**

JAMES P. CINQUE declares under penalty of perjury pursuant to 28 U.S.C. §1746:

1. I am a member of Cinque & Cinque, P. C., attorneys for Glasswall, LLC.

("Glasswall"). I have knowledge of the facts set forth herein and submit this declaration in support of Glasswall's motion to dismiss the application by plaintiff Monadnock Construction, Inc. ("Monadnock") to confirm the August 29, 2017 arbitration award.

2. In the arbitration against Glasswall, Monadnock sought over \$17 million in damages. The Arbitrators awarded Monadnock \$1,280,003.25 in so-called “performance damages” relating to post-termination completion issues and absolutely zero in “delay damages.” In addition, the Arbitrators specifically found that Monadnock had breached the agreements between the parties prior to their completion by failing to accept windows which had been manufactured by Glasswall:

We find that Monadnock wrongfully refused to accept delivery of the windows, including ancillary materials needed for their installation in the fall and winter of 2013-2014, in breach of the subcontracts (Award, Ex. C to the state court petition, Ex. A hereto, p. 10).

The arbitration hearings were conducted in New York County, and the award was rendered in New York County.

3. As the prevailing party in the arbitration, Glasswall filed a notice of petition and petition to confirm the arbitration award with the Supreme Court New York County (the situs of the arbitration) on September 22, 2017 (Exhibit A) and served Monadnock on September 25, 2017.

4. On October 3, 2017 Monadnock filed its motion to confirm the arbitration award in this Court. As explained in the accompanying memorandum of law, Glasswall’s application to the state court in the county in which the arbitration was conducted and the award issued is entitled to priority as it was the first application filed and served. Accordingly, the Court should dismiss Monadnock’s application and defer to the state court.

I hereby declare the truth of the foregoing statements under penalty of perjury pursuant to

28 U.S.C. § 1746.

Executed this 6th day of October, 2017 at New York, New York.



JAMES P. CINQUE